

cc: Dan Phil
Lawson

SALMON

Alliance Alert

COMMUNITIES

Please
make
copy
Dan
Phil

COMMERCE

Issue No. 203
November 5, 1999

News from the Columbia River Alliance for Fish, Commerce and
Communities

Oregon Enters Clean Water Act Suit

State supports environmental plaintiffs attack on dams

On November 1, under orders from Governor John Kitzhaber, Oregon's Attorney General filed a *Amicus Curiae* "friend of the court" brief in the *National Wildlife Federation, et.al. v. U.S. Army Corps of Engineers* lawsuit. The original lawsuit, filed by the NWF, commercial fishing groups, and several environmental groups allege the Corps of Engineers failed to comply with the Clean Water Act in the operation of the four Lower Snake River Dams. Oregon's action is disguised as an *Amicus Curiae* but is really "a friend of the environmental plaintiffs" brief that rebuts the Corps' position.

The Oregon legal brief asserts the Corps must comply with the Clean Water Act for both point source and nonpoint source pollution, and that environmental plaintiffs have "a right of action" under the Administrative Procedures Act to secure Corps compliance. In addition, Oregon rebuts the Corps' direct case by disputing the case law that plaintiffs do not have "a right of action".

Oregon disputes the Corps' claim that plaintiffs lack a private right of action under Washington State law. In their legal brief, Oregon states "the Corps' purported reliance upon section 1323(a) is nothing more than a disguised attempt to have this court revisit and effectively overrule the Ninth Circuit's decision in those cases." Finally, Oregon rebuts the Corps' position that the environmental plaintiffs demands were considered in the previous

Endangered Species Act case, *American Rivers v. NMFS*. They state "the present challenge has nothing to do with ESA compliance. Plaintiffs here challenge certain orders, as well as inaction, resulting in the Corps' failure to bring dam operations into compliance with state water quality standards."

Oregon requests the court grant a summary judgement against the U.S. Army Corps of Engineers to compel them to comply with state water quality standards. They say "the Corps should not be allowed to undermine the process through its refusal to comply with state water quality standards."

Oregon exerts pressure on Washington Dams

Oregon's action is clearly an attempt to have the Court declare the Corps of Engineers is violating the Clean Water Act in operations of the four Lower Snake River Dams located in Washington. Once they obtain this decision, Oregon knows that, short of dam removal, nothing can meet water temperature and dissolved gas standards. The Oregon approach is really a 'tag team' effort with the environmental/commercial fisherman plaintiffs to use the Clean Water Act to force dam breaching.

Washington voters oppose net initiative

For the second time in five years, the Washington net ban initiative was soundly rejected by voters. As in the 1995 election, the salmon saving initiative lost by almost a 60 to 40 percent margin.

The Ban the Nets supporters fought overwhelming odds against Washington and Alaska commercial fishermen and fish processors, environmental groups, and media. Opponents spent over \$500,000, twice the supporters, to defeat the measure.

Five counties supported the measure; Benton, Clark, Franklin, Kitsap, and Skamania. Supporters believe that, as salmon recovery efforts and land use restrictions expand to the Puget Sound and throughout Washington, a third initiative attempt to ban nets will be successful.

Ad campaign rebuts dam breaching propaganda

The Pulp and Paper Resource Council and the Lewiston Chamber of Commerce are sponsoring advertisements in regional newspapers to combat the well-funded dam breaching advocates ad campaign.

The following advertisement was published in the Lewiston Tribune on October 28, 1999.

Alaska Governor takes on Snake Dams

Governor Tony Knowles chided Governors Locke and Kitzhaber for not caring enough for Columbia River salmon. Knowles said that while Alaska only results in three-tenths of one percent of the human caused salmon mortality, dams on the Columbia are responsible for up to 93 percent.

Knowles called the Columbia and Snake River dams "killing fields" that wild chinook must survive. Our Governors fired back and said that it was wrong to lock away any potential tool that may help salmon.

What are they smoking in Eugene?

Enviro Group says dam breaching good for NW economy

Released this week was a fanciful study claiming thousands of jobs will be created by

breaching the four Lower Snake River Dams. Eugene economist Ed Whitelaw of Eco Northwest prepared the study, funded by Trout Unlimited and Earthjustice Legal Defense Fund.

The credibility of this study is best demonstrated by its first listed source, Oregonian newspaper reporter Jonathan Brinckman. The report criticizes a future Corps' study which has not yet been released.

According to Trout Unlimited Dam Removal will provide -	
Construction	12,000 new jobs
Tribal	significant new employment
Recreation	3,100 new jobs
Commercial Fishing	more jobs from Alaska to California
Irrigated Agriculture	no job change
Transportation	2,554 to 4,362 new short term jobs and 236 new long-term jobs
Electrical Consumers	no job change
Water Users	1,467 new jobs

Alliance Alert issues first correction of 1999

Two recent stories require clarification - first, we reported that NMFS and its regional Director Will Stelle are being investigated by the Department of Commerce Inspector General (IG). Not entirely correct, the IG could not "confirm or deny" that an investigation was underway, however, they did confirm that a "routine performance review" is being conducted, an odd activity for a Department IG. Second, the Bruce Babbitt dam breaching story quoted at length in last week's Alert was from a Open Spaces Quarterly opinion editorial from early in 1999.

What is a scientist?

Scott Bosse, Idaho Rivers United scientist, took strong exception to the October 22nd Alliance Alert article concerning the 200 "scientist" letter he is currently promoting. Scott was particularly troubled with CRA's assertion the letter was a "lie".

Question from Bosse: What do you mean when you say the March scientists' letter was a lie? Does that mean it never happened? If you have specific objections to any of the information contained in the letter, please let me know what they are.

CRA Reply: The "scientists" letter was a lie because it was based on the 1998 PATH report. That report was incorrect because the data used in the analysis was obsolete, and assumptions that were drivers in the models were not correct ("D" value). There has never been any scientific proof of the level of delayed mortality by transport purported in the PATH report. Since the system has been modified and survival rates markedly improved as indicated by the NMFS PIT tag data, it is a lie to use the old data.

Also, claiming that the runs declined 90 percent because of the four lower Snake River dams is a lie.

By 1930, half the spawning habitat had been lost due to dams and habitat destruction. Brownlee was constructed in 1957, just before the four lower Snake River dams, Oxbow in 1961, and Hells Canyon in 1967. Those three Idaho dams cut off a lot more spawning habitat, about 90 percent of the fall chinook habitat.

PATH claims there will be a 70 percent increase in fall chinook spawning habitat if the four dams are taken out. Put that in perspective. Only 5 percent of the fall chinook habitat was in the lower river. Increase that by 70 percent, and you get 8.5 percent. Taking out the four lower dams will not restore the 90 percent of the habitat above Hells Canyon Dam.

It is a lie to claim that smolt transportation is a failed practice. Even by PATH's conservative estimate, it gets 98 percent of the fish from Lower Granite Reservoir to below Bonneville Dam alive. Take away the bogus "D" value, and transport is clearly the best way to get fish through the system. Using NMFS measured survival numbers, we 82 percent survival with the current spread-the-risk management. If we were to adopt a maximum transport strategy, survival could increase to over 90 percent.

If we adopt your dam breaching strategy, system survival would drop to 62 percent. Based on your March letter, you and 200 other advocate "scientists" believe it is worth spending billions to reduce system survival 20 percent. How will that recover endangered salmon?

Question from Bosse - If I and the other 205 scientists who signed the letter are not in fact scientists, then what exactly is a scientist? Does one have to pimp for industry to qualify? Is your definition of a scientist one who has more than enough knowledge to solve a problem, but refuses to advocate its use so he/she can call for more studies and rake in more research dollars?

CRA Reply: Scientists rely on facts, and retain open minds, and analyze all the data. Being a pimp for a political advocacy that wants not only to ignore the facts, but bury them is not being a scientist.

Thank you for the question.

Columbia River Alliance for Fish Commerce and Communities
308 S.W. First Ave, Suite 165
Portland, Oregon 97204
(503) 224-4337
(503) 224-5176 fax
CRAlliance@aol.com
CRA1.org home page